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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,131	09/19/2002	Ronald G. Fink	65564816	9781

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

CV

Office Action Summary	Application No.	Applicant(s)	
	10/065,131	FINK ET AL.	
	Examiner	Art Unit	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/19/02; 11/9/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,784,440 in view of Rosenthal [Pat. No. 6,150,663]. It would have been obvious to one of ordinary skill in the art to incorporate the hood (column 13, line 32) of Rosenthal into the invention of '440 since '440 already claimed the use of UV radiation which inherently also produced ozone and hydroxyl radicals, and since the hood of Rosenthal provided an effective means for containing and directing the UV radiation.

3. Claims 1-31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 11/208,662 in view of Rosenthal. It would have been obvious

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to one of ordinary skill in the art to incorporate the hood (column 13, line 32) of Rosenthal into the invention of '662 since '662 already claimed the use of UV radiation which inherently also produced ozone and hydroxyl radicals, and since the hood of Rosenthal provided an effective means for containing and directing the UV radiation.

This is a provisional obviousness-type double patenting rejection.

4. Claims 1-31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/064,154 in view of Rosenthal. It would have been obvious to one of ordinary skill in the art to incorporate the hood (column 13, line 32) of Rosenthal into the invention of '154 since '154 already claimed the use of UV radiation which inherently also produced ozone and hydroxyl radicals, and since the hood of Rosenthal provided an effective means for containing and directing the UV radiation.

This is a provisional obviousness-type double patenting rejection.

5. Claims 1-31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/248,671 in view of Rosenthal. It would have been obvious to one of ordinary skill in the art to incorporate the hood (column 13, line 32) of Rosenthal into the invention of '671 since '671 already claimed the use of UV radiation which inherently also produced ozone and hydroxyl radicals, and since the hood of Rosenthal provided an effective means for containing and directing the UV radiation.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 1 recites "sanitizers including UV light, ozone, and hydroxyl radicals". It is not clear whether all of these components are required, or simply one of them.
9. Claim 5 recites "approximately up to 0-30%". It is not clear what range is being claimed.
10. Claim 20 recites "to at least partially reduce radiation... away from the food". It is not clear what action being taken, reduction or deflection.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 25 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenthal [Pat. No. 6,150,663].

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Rosenthal teaches a device and method for sanitizing food comprising a means for subjecting food to sanitizing UV radiation (abstract), means for subjecting food to ozone (column 16, line 23), means for subjecting food to hydroxyl radicals (column 16, line 40), the UV radiation inherently breaking down moisture and oxygen in the air into ozone and hydroxyl radicals as evidenced by applicant's disclosure (paragraph 0050), and hoods facing the food (column 13, line 32).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-5, 7-21, 24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal in view of Soremek [Pat. No. 5,961,920].

Rosenthal teaches a device and method for sanitizing food comprising a means for subjecting food to sanitizing UV radiation (abstract), means for subjecting food to ozone (column 16, line 23), means for subjecting food to hydroxyl radicals (column 16, line 40), the UV radiation inherently breaking down moisture and oxygen in the air into ozone and hydroxyl radicals as evidenced by applicant's disclosure (paragraph 0050), downward bent hoods with rigid frames which face the food (column 13, line 32), UV radiation at 220-310 nm (column 5, line 34), low pressure mercury vapor lamps (column 13, line 18), an electrical control box with a cover plate (Figure 1, #66), an array of six

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and nine modular UV reflector tubes under a shield (Figure 1, #52), electronic ballasts (column 14, line 7), . Rosenthal does not recite in an array of modular target rods. Soremark teaches method and device for treating articles with UV radiation, ozone, and hydroxyl radicals (column 5, lines 12-26) by using plural target rods made from a catalyst such as titanium dioxide (Figure 1, #8; column 5, line 11). It would have been obvious to one of ordinary skill in the art to incorporate the target rods of Soremark into the invention of Rosenthal since both are directed to methods for sanitizing articles, since Rosenthal already included a means for treating the food with UV radiation, ozone, and hydroxyl radicals as shown above, and since the target rods of Soremark provided an increased efficiency in the production of hydroxyl radicals (column 4, line 55).

15. Claims 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal, in view of Soremark, as applied above, and further in view of Hankinson et al [US 2003/0198716A1].

Rosenthal and Soremark teach the above mentioned components. Rosenthal and Soremark do not recite a mister. Hankinson et al teach a device for sanitizing foods with UV radiation and ozone by use of a spray mister (paragraph 0055). It would have been obvious to one of ordinary skill in the art to incorporate the mister of Hankinson et al into the invention of Rosenthal, in view of Soremark, since all are directed to systems for sanitizing articles, since Rosenthal already taught the application of aqueous ozone (column 16, line 23), and since the ozone mister of Hankinson et al would have eliminated the need for immersing the food in a bath.

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16. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal, in view of Soremark, as applied above, and further in view of Owesen [Pat. No. 5,891,399].

Rosenthal and Soremark teach the above mentioned components. Rosenthal and Soremark do not recite wheels. Owesen teaches a device for sanitizing with UV radiation which is mounted on wheels (Figure 6A, #320). It would have been obvious to one of ordinary skill in the art to incorporate the wheels of Owesen into the invention of Rosenthal, in view of Soremark, since all are directed to systems for sanitizing, and since the wheels of Owesen provided added mobility and ease of movement.

17. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal, in view of Soremark, as applied above, and further in view of Monagan [Pat. No. 6,613,277].

Rosenthal and Soremark teach the above mentioned components. Rosenthal and Soremark do not recite an ozone monitor and alarm. Monagan teaches a sanitizing system comprising an ozone monitor and alarm (column 12, lines 33-60). It would have been obvious to one of ordinary skill in the art to incorporate the ozone alarm of Monagan into the invention of Rosenthal, in view of Soremark, since all are directed to sanitizing systems, since Rosenthal and Soremark already included the use of ozone, and since the ozone monitor and alarm of Monagan provided an effective means for controlling the amount of ozone used.

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18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. He et al [Pat. No. 6,682,697], Endico [Pat. No. 6,013,297], Endico [Pat. No. 5,858,430], and Curry et al [Pat. No. 6,692,694] teach methods and devices for treating food with UV radiation.

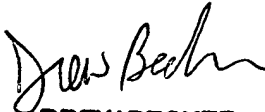
Response to Arguments

19. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER
3-14-06